

DEPARTMENT OF STATE REVENUE

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For The Period: 1995 Through 1998

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ISSUES

I. Sales/Use Tax: Diagnostic Analyzers

Authority: IC 6-2.5-3-5(a); 45 IAC 2.2-3-16; Information Bulletin #31; IC 6-2.5-3-2; Information Bulletin #20; IC 6-2.5-1-2; IC 6-2.5-4-1; IC 6-2.5-3-1;

The taxpayer protests the assessment of use tax on diagnostic analyzers.

STATEMENT OF FACTS

Taxpayer is a global manufacturer of laboratory diagnostic equipment and supplies. The taxpayer provides its customers with diagnostic equipment without charge. The taxpayer's customers then buy items (e.g., reagents) used in performing medical diagnostic tests. The taxpayer has no location in Indiana but does have "seeded" diagnostic equipment that it owns at various customer locations in Indiana. More facts will be provided as needed.

I. Sales/Use Tax: Diagnostic Analyzers

DISCUSSION

Two types of diagnostic equipment are at issue. The first type involves what will be called "S" instruments which were manufactured in Florida. The second type, which will be referred to as "X, Y, and Z" analyzers, were purchased by the taxpayer from Company D. Thus the taxpayer's arguments can be broken out as follows:

- (1) Regarding "S" instruments, the taxpayer argues that the items were made in Florida and that use tax was paid to Florida;
- (2) Regarding the "X, Y, and Z" analyzers, taxpayer argues that it bought the diagnostic division of Company D. The acquisition included the three types

of analyzers (namely—X, Y, and Z—which were already placed at medical facilities in Indiana, per the taxpayer) and various other business assets. The taxpayer states that the acquisition of the medical diagnostic division of Company D does not constitute a retail transaction, it is in fact a casual sale, since Company D is not in the business of selling off its divisions.

“S” Instruments

The taxpayer states that it “self-constructed [S] assets manufactured in Florida for [its own] use” and that “use tax from the [S] instruments manufactured in Florida and seeded in Indiana is due and paid to the state of Florida.” Further, the taxpayer says:

Florida requires use tax to be calculated on tangible personal property removed from inventory for your [*sic.*] own use. Indiana Regulation, Rule 45 IAC 2.2-3-16 reads “Liability for Indiana use tax shall be reduced by a credit for the amount of any sales, purchase, or use tax paid to any other state ... with respect to the tangible personal property on which Indiana use tax applies.” The “S” seeded instruments were manufactured in Florida and capitalized on [the taxpayer’s] books. These instruments were then placed at medical facilities in Indiana. Once these instruments were removed from inventory, Florida use tax was due and paid to Florida.

As alluded to in the taxpayer’s quote above a credit is provided for sales/use tax paid to another state. The Indiana Code, Indiana Administrative Code, and Information Bulletin #31 (Sec. II-B) each deal with the credit.

IC 6-2.5-3-5(a) provides:

A person is entitled to a credit against the use tax imposed on the use, storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property.

45 IAC 2.2-3-16 reads in full,

Liability for Indiana use tax shall be reduced by a credit for the amount of any sale, purchase, or use tax paid to any other state, territory or possession of the United States with respect to the tangible personal property on which Indiana use tax applies.

And finally the relevant part of Information Bulletin #31, Sec. II-B:

A person is entitled to a credit against the Indiana use tax which is equal to the amount of sales tax, purchase tax, or use tax properly and validly paid to another state

The taxpayer at hearing submitted documentation showing that use tax was paid to Florida on the “S” instruments at issue.

To recapitulate: the “S” instruments are “self-constructed assets manufactured in Florida for [the taxpayer’s] own use” and “seeded” without charge (i.e., free) at customer locations “with the understanding the customer will buy from the taxpayer the supplies called reagents that are used in performing medical diagnostic tests” Also, the taxpayer capitalized the “S” instruments on the taxpayer’s books. Documentation was provided showing that use tax was paid to Florida.

“X, Y, and Z” Analyzers

Turning to the Company D division acquired analyzers (X, Y, and Z), the taxpayer states:

For the tax year 1996, [taxpayer] acquired the medical diagnostic division of [Company D]. Included in this purchase were X, Y, and Z analyzers already placed at medical facilities located in Indiana. ...

The acquisition of the Company D medical diagnostic division by [taxpayer] would not meet the definition of a retail transaction. ...

[Company D] is not in the business to sell off their business assets. Therefore this transaction would meet the definition of an isolated or occasional sale which would be exempt from Indiana sales and use tax.

A retail transaction is defined in relevant part by IC 6-2.5-1-2 and IC 6-2.5-4-1 as:

IC 6-2.5-1-2 (a) "Retail transaction" means a transaction of a retail merchant that constitutes selling at retail as described in IC 6-2.5-4-1, that constitutes making a wholesale sale as described in IC 6-2.5-4-2, or that is described in any other section of IC 6-2.5-4.

(b) "Retail unitary transaction" means a unitary transaction that is also a retail transaction.

IC 6-2.5-4-1 (a) A person is a retail merchant making a retail transaction when he engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:

- (1) acquires tangible personal property for the purpose of resale; and
- (2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

- (1) the property is transferred in the same form as when it was acquired;
- (2) the property is transferred alone or in conjunction with other property or services; or
- (3) the property is transferred conditionally or otherwise.

The pertinent parts of the Indiana Code regarding use tax are as follows:

- IC 6-2.5-3-1** (a) "Use" means the exercise of any right or power of ownership over tangible personal property.
- (b) "Storage" means the keeping or retention of tangible personal property in Indiana for any purpose except the subsequent use of that property solely outside Indiana.
- (c) "A retail merchant engaged in business in Indiana" includes any retail merchant who makes retail transactions in which a person acquires personal property for use, storage, or consumption in Indiana and who maintains:
- (1) an office, place of distribution, sales location, sample location, warehouse, storage place, or other place of business which is located in Indiana and which the retail merchant maintains, occupies, or uses, either permanently or temporarily, either directly or indirectly, and either by himself or through an agent or subsidiary; or
 - (2) a representative, agent, salesman, canvasser, or solicitor who, while operating in Indiana under the authority of and on behalf of the retail merchant or a subsidiary of the retail merchant, sells, delivers, or takes orders for sales of tangible personal property to be used, stored or consumed in Indiana.

And IC 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

Taxpayer argues that it was a "casual sale" and that Company D is not in the business of selling off entire divisions. Information Bulletin #20 is of import in this context. It states in part:

Indiana Sales Tax is not imposed upon transactions involving casual sales (except for sales of vehicles, aircraft, or watercraft where use tax is paid upon licensing).

A "casual sale" is an isolated or occasional sale of tangible personal property when:

- (1) Such property was originally acquired by the seller for the seller's own use or consumption; and
- (2) The seller, in the ordinary course of his or her regularly conducted business, does not acquire such property for the purpose of resale. ...

The taxpayer provided documents showing that purchase of Company D's division included business assets such as real property, machinery and equipment, office equipment, permits/licenses, contracts/sales orders, business records, computer software

assets, and inventory. Company D's ordinary and regular course of business is not to sell off all of these items.

FINDING

The taxpayer's protest is sustained.